

DEPARTMENT OF THE ARMY  
OFFICE OF THE DEPUTY CHIEF OF STAFF FOR PERSONNEL, G-1  
USACHRA, JRTC & FORT POLK CIVILIAN PERSONNEL ADVISORY CENTER  
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CIVILIAN PERSONNEL  
BULLETIN No. 07-05

28 April 2005

**Administrative Claims for Annual Leave as a Result of the Decision in *Butterbaugh v. Department of Justice*, 336 F.3d 1332 (Fed. Cir. 2003)**

1. This Civilian Personnel Bulletin provides notification of the possible impact of the decision in Butterbaugh v. Department of Justice on individuals who, beginning in 1980, were simultaneously Federal employees and **(1) Reservists, including Military Technicians, or (2) members of the National Guard** and who may have been improperly charged military leave in increments of calendar days, rather than workdays.

2. The Butterbaugh decision reversed the Office of Personnel Management's interpretation of section 6323 of Title 5, United States Code and held that, at least since 1980, section 6323 has required Federal employees to take military leave only on days on which they are required to work in their civilian jobs. Accordingly, agencies should have allowed 15 workdays of military leave for reserve training each year, instead of 15 calendar days, as was the practice, in accordance with OPM's interpretation until December 21, 2000, when section 6323 was amended.

3. Therefore, current Federal employees, as well as those who have retired or separated from the Federal government who: (1) were charged military leave while they were **appropriated fund employees**, and (2) believe they have valid leave claims under Butterbaugh, may choose to file claims under the Barring act with the Federal agency or DoD component that charged them leave. **Individuals must file claims with the agency responsible for the asserted erroneous leave charges no later than six years from the date or dates they believe they were improperly charged leave.** Individuals who chose to file a claim are encouraged to use the claims process set up by the Defense Finance and Accounting Service (DFAS) instead of filing with the DoD component.

4. Employees will be credited for one (1) day of annual leave for each nonworkday occurring within a period of active duty for which he or she was charged military leave. A maximum of 4 days of annual leave may be credited for each fiscal year. Any annual leave credited as a result of an employee's claim must be placed in a restored leave account and the restored leave must be used by the employee by the end of the leave year in progress 2 years after the date of restoration. (For employees who receive annual leave credit in leave year 2005, the time limit for using the reccredited leave will be the end of leave year 2007, which is January 5, 2008.) Former employees filing a claim must receive a lump-sum payment for any annual leave reccredited as a result of that claim, paid at the rate of pay the employee was earning at the time of his or her separation or retirement.

5. Current or former Federal **appropriated fund employees** filing claims arising from leave charges at Fort Polk should complete the attached claim form and mail it along with all required supporting documents to **DFAS Payroll Office, PO Box 33717, Pensacola, FL 31508-3717**. In addition, the envelope should be annotated "Butterbaugh Claim." The information required is as follows:

- a. Your current servicing payroll office;
- b. Each non-workday that you were charged military leave;
- c. Your work schedule during the applicable timeframe(s), if other than Monday through Friday;
- d. Whether you used annual leave or leave without pay to fulfill reserve duty;
- e. A certificate of attendance for each period of active duty; and
- f. A copy of your civilian leave and earnings statement reflecting the improper charge of military leave (if available).

6. The Barring Act does not apply to **nonappropriated fund employees**. However, current or former **nonappropriated fund employees** who: (1) were charged military leave, and (2) believe they have valid leave claims under Butterbaugh should contact the NonAppropriated Fund Personnel Office at 531-6631/4955 for advice and assistance in filing a claim.

7. **Appropriated fund employees** may contact a Human Resources Specialist or an Assistant at the CPAC by calling 531-4020, for additional guidance in filing their Butterbaugh claims.

DONALD R. MALLET  
Director, Civilian Personnel  
Advisory Center

Attachment – Claim Form

TO: DFAS Payroll Office, PO Box 33717, Pensacola, FL 31508-3717

SUBJECT: "Butterbaugh Claim"

1. This is a claim for annual leave restoration based on the decision rendered in Butterbaugh v. DOJ. This claim complies with the guidance found in CPB 07-05 issued by the Civilian Personnel Advisory Center, Fort Polk, Louisiana, which implemented the instructions contained in the OPM Memorandum, Subject: Administrative Claims for Annual Leave as a Result of Decision in Butterbaugh v. Department of Justice, dated October 13, 2004, and the Office of the Under Secretary of Defense Memorandum, Subject: Administrative Claims for Annual Leave as a Result of Decision in Butterbaugh v. Department of Justice, 336 F.3d 1332 (Fed.Cir. 2003), dated April 13, 2005.

2. The following information applies to my claim and is clearly printed or typed, signed/dated, and with supporting documentation attached.

**Name (Last, First, MI)**\_\_\_\_\_

**SSN**\_\_\_\_\_

**Branch** --- (Circle One)

- a. Reservist (including military technicians)  
or
- b. Member of the National Guard

**Status** --- (Circle One)

- a. Current      b. Retired      c. Separated

**Address/City/Zip**\_\_\_\_\_

**Phone (Home, Wk, Cell)**\_\_\_\_\_

**E-Mail Address**\_\_\_\_\_

3. My claim is for the following dates, during which I was charged Military Leave during non-workdays:

<b>Period of Military Duty:</b> [Format yymmdd – yymmdd i.e.- 990326 – 990412]	<b>Dates of Non-workdays for Which            Military Leave was Used During the            Stated Period:</b> [Format: yymmdd / yymmdd / yymmdd i.e.- 990328 / 990403 / 990404 / 990410]	<b># Days            Claimed</b> (Maximum 4 Days per Fiscal Year)

4. My work schedule during the applicable timeframes was:

a. Monday-Friday **OR**

b. Other:\_\_\_\_\_

5. I used one of the following to fulfill reserve duty: ( circle one)

a. Annual leave   b. Leave Without Pay   c. Both

6. My servicing payroll office is **Denver, CO (PON – 97380800)**

7. I have attached the required documentation to support my claim:

a. Copy of certified military orders, military pay records, or Military LES.

b. Copy of Civilian LES reflecting the improper charge of military leave.

8. In mailing my form directly to DFAS, I have annotated the envelope with  
**“Butterbaugh Claim.”**

9. By signing and submitting this claim I declare, under penalty of perjury, that this is a truthful and accurate representation of my claim and that the attached document/s is/are exact, correct and complete copy/s of the original document/s in my possession.

Signature\_\_\_\_\_

Printed Name\_\_\_\_\_

Date\_\_\_\_\_